

REMARKS

This Amendment is submitted in response to the Office Action mailed on June 22, 2004. Claims 1-5, 7-11, 13-35 are pending in the application. Claims 6 and 12 have been canceled. The Office action rejects Claims 1-35 under 35 U.S.C. § 102. Claims 1, 7, 13, 18, and 20 have been amended so that the pet food matrix includes a humectant. Support for this amendment can be found in the application at page 6, lines 24-28.

Claims 7-12, 18, 28-29 and 34-35 stand rejected under 35 U.S.C. 102(b) as anticipated by Gellman et al. (U.S. Patent 4,800,099) and Claims 1-6, 13-17 and 19-20 stand rejected under 35 U.S.C. 103 as obvious over Gellman et al. on the basis that farinaceous materials described in Gellman naturally contain some amount of fiber. Although the Office action admits that insoluble fiber is not specifically mentioned as an ingredient in Gellman et al., inexplicably the rejection for anticipation is maintained. Apparently, the Patent Office considers insoluble fiber as inherent in Gellman. As the Office action states "the farinaceous materials described at column 10 *naturally contain some amount of fiber.*" However, this statement misses the point. The pet food of the invention includes insoluble fiber not just fiber. This limitation is present in each of the claims. And again the disclosure in Gellman is only concerned with the addition of starch or starch-like material not with fiber or insoluble fiber. Among other starchy substances, Gellman's preferred farinaceous material is said to be flour (Col. 10, lines 25-26) which can be bleached white flour which is well known to have had the fiber removed. Thus, Gellman fails to disclose insoluble fiber either literally or inherently and, with respect to the rejection based on obviousness, provides no suggestion that would lead one of skill to incorporate insoluble fiber into a pet food product.

In addition, Gellman fails to disclose pet food having a length of at least 15 mm, nor does it disclose pet food having a width of at least 13.5 mm as required in the invention as claimed in Claims 1 and 13 and 19. Gellman is silent on these dimensions and therefore provides no suggestion for these dimensions as would be required to support an obviousness rejection. Therefore, Claim 1 and its dependent Claims 2-5; Claim 13 and its dependent Claims 15-17; and Claim 19 are also allowable for this reason.

The applicant requests that the basis for the rejections in view of Gellman be reconsidered in light of these reasons and requests that the rejections be withdrawn.

Claims 1-20, 21, 26, 29, 32 and 35 were rejected under 35 U.S.C. 102(b) as anticipated by Hand et al. (US Patent 5,431,927). The Office action stated that Hand teaches dried pellets having a density in the range of about 10 to about 35 lbs/ft³. Each of the independent claims, specifically Claims 1, 7, 13, 18, and 20, have been amended as set forth above. Hand fails to disclose or suggest including a humectant as in the invention as claimed. Therefore, Applicant submits that Claims 1, 7, 13, 18, and 20 are allowable over Hand. Further, Claims 2-5, 8-11, 14-17, 19, 21, 26, 29, 32 and 35 which depend from these claims are patentable for the same reasons. Applicant requests that the rejection with respect to Hand be withdrawn.

The Office action rejected claims 21, 24-25, 27-28, 30-31, and 33-34 under 102(e) as anticipated by Wang (US Patent 6,455,083). The Office action indicated that Claims 21-35 do not find support in the parent application 09/483,328 and therefore do not benefit from its filing date for priority purposes.

Applicant submits that Claims 21-35 in the application are entitled to the priority date of the parent application which is September 17, 1998. Specifically, Example 1 in the parent application discloses the use of corn gluten as a protein source, as recited in pending Claims 25, 28, 31, and 34, as is the low moisture content as recited in Claims 26 and disclosure relating to the low density of 18 lbs/ft³ can be found on Page 6 of the original application and as recited in Claims 29, 32, and 35. In addition, Wang is deficient with respect to the claimed invention for the following reasons. The Wang pet food has a density that is far higher than in the present invention. In Wang the edible thermoplastic pet chews have a density of about 1.2 to 1.5 g/cubic centimeters. As shown in the attached conversion table at Appendix A, this corresponds to about 74.9 lbs/cubic foot. In contrast, the present invention covers pet foods having a density of not greater than 20.0 lbs/ft³. As can be seen, Claim 1 requires a density of not greater than 18 lbs/ft³, Claims 7, 13, and 20 requires a density of not greater than 20 lbs/ft³ and Claim 18 requires a density of not greater than 20.5 lbs/ft³. Thus, even if Wang were otherwise a proper reference to cite against the pending claims, which Applicant denies, Wang does not meet the limitations of the rejected claims with respect to density. Thus, Applicant requests that this rejection be reconsidered and withdrawn.

The Office action rejected Claims 22 and 23 under 35 U.S.C. 103 as obvious over Hand in view of Schommer. The deficiencies of Hand with respect to independent Claim 20 have been

noted above. Specifically, Hand lacks a humectant in its pet food products. Schommer is directed to containers for pet food and fails to cure this deficiency of Hand. Thus, the inventions of Claims 22 and 23, which depend from Claim 20 and contain all of its limitations, are allowable for the same reasons that Claim 20 is allowable. For this reason Applicants respectfully request that the obviousness rejection be reconsidered and withdrawn.

Claims 1-20 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claim 1-24 of copending Application 09/154,646; Claims 1-32 of Application 10/052,949; and Claims 1-33 of Application 10/037,941. The Applicant acknowledges these provisional rejections and will address the issue in the event it matures into a rejection.

In light of the foregoing comments, the Applicants respectfully submit that the application is in condition for allowance and requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

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